

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

CV #: CV 92-2156

UNITED STATES OF AMERICA,
Plaintiff,

v.

Rosa Sanabria

Defendant(s),

and

NEW York Presbyterian Hospital

Garnishee

HON. Carol Bagley Amon
Claim No. C-29786

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ AUG 10 2005 ★

P.M. _____
TIME A.M. _____

GARNISHEE ORDER

The annexed affirmation of Liberatore J. Iannarone, an attorney for the plaintiff, shows that a Writ of Garnishment, directed to the Garnishee, has been duly issued and served upon the Garnishee, or the Garnishee has voluntarily furnished us with employment verification. A copy of the Answer of the Garnishee, or the verification letter will be annexed, stating that the Garnishee had in its possession or his control personal property belonging to and due to the defendant, Rosa Sanabria, and that garnishee was indebted to defendant, Rosa Sanabria, the sum of \$2,791.31 weekly as a result of the garnishees employment of defendant Rosa Sanabria.

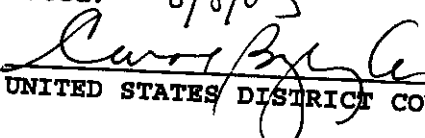
The defendant, Rosa Sanabria, was served with Notice of his/her right to a hearing to determine exempt property as provided for in Section 28 U.S.C., 3205(5) and has not requested a hearing to determine exempt property.

15%
Now, on motion of Mullen & Iannarone, P.C., attorneys for the Plaintiff, it is ordered that the Garnishee pay the sum equal to 25% of the defendant's net disposable weekly earnings to the plaintiff, payments made payable to the U.S. Department of Justice, and continue said payments until the debt to the plaintiff is paid in full or until the garnishee no longer has custody, possession or control of any property belonging to the defendant, Rosa Sanabria, or until further Order of the Court.

SO ORDERED;

Dated:

8/8/05


UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

INDEX #: CV 92-2156
HON. Carol Bagley Amon
Claim No. C-29786
DECLARATION FOR
ORDER OF GARNISHMENT

-----X
UNITED STATES OF AMERICA,
Plaintiff,

HON. CAROL B. AMON

-against-

Rosa Sanabria,

Defendant.
-----X

I, Liberatore J. Iannarone, hereby declare as follows:

1. I am an Attorney with the firm of Mullen & Iannarone, P.C., attorneys of record for the Plaintiff.
2. This action was commenced to recover a debt due to the plaintiff, the United States of America in the amount of \$21,070.67. Defendant Rosa Sanabria, and garnishee, has been served with a copy of the Writ of Garnishment, pursuant to Section 28 U.S.C. as required by the statute, as it appears on the Certification of Service previously filed with the Clerk of this Court.
3. This is an application under the Federal Debt Collection Procedures Act (FDCPA) of 1990, 28 U.S.C. §§ 3202 and 3205. The FDCPA provides the exclusive remedy for the United States to recover on a judgment recovered in it's favor.
4. Under the Writ of Garnishment and list of exemptions served upon the defendant, Rosa Sanabria, the defendant failed to request a hearing or file a claim for exemption with respect to the Writ of Garnishment, and the time to do so has expired.
5. The defendant is not an infant nor incompetent. Defendant is not presently in the military service of the United States as appears from facts in a credit report prepared for this litigation and the affidavit of the process server that served the original summons in this action.

6. The defendant is indebted to the plaintiff United States of America in the following amounts:

Judgment Amount Due
including Interest thru
November 24, 2004 at the legal
rate of 3.510% \$21,070.67

7. The defendant is currently employed by NEW York Presbyterian Hospital, with earnings of \$2,791.31 weekly. Therefore, Plaintiff seeks an Order of Garnishment in the amount of 25% of the defendant's net disposable weekly earnings to continue said payments until the debt to the plaintiff is paid in full or until the garnishee no longer has custody, possession or control of any property belonging to the defendant, Rosa Sanabria, or until further Order of this Court.

WHEREFORE, plaintiff United States of America requests that the garnishment of the wages of defendant Rosa Sanabria be ordered and that the Order of Garnishment be entered in favor of plaintiff and against the defendant in the amount stated herein.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief, that the amount claimed is justly due and owing to plaintiff, and that the disbursements sought to be taxed have been made in this action or will necessarily be made or incurred in this action.

Dated: August 2, 2005

Liberatore J. Iannarone
Mullen & Iannarone, P.C.
Attorneys for the Plaintiff
300 East Main Street
Smithtown, NY 11787

Tel. No. (631)361-7050
Fax No. (631)361-7354

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

	INDEX NO. CV 92-2156
	HON. JUDGE Carol Bagley Amon
	Claim No. C-29786
UNITED STATES OF AMERICA,)
Plaintiff,)
)
v.)
)
Rosa Sanabria	
)
Defendant(s),)
)
and)
)
NEW York Presbyterian Hospital	
)
Garnishee)

CERTIFICATION OF SERVICE OF DOCUMENTS
ON JUDGMENT DEBTOR

The United States of America, the judgment creditor herein, hereby certifies that a copy of the Writ of Garnishment, along with the initial Clerk's Notice to Judgment Debtor was served on the judgment debtor, Rosa Sanabria , and personal service of the Writ of Garnishment was made on the garnishee. Copies of both affidavits of service are annexed.

DATE: August 2, 2005

Liberatore J. Iannarone
Mullen & Iannarone, P.C.
Attorneys for the Plaintiff

NEW YORK**AFFIDAVIT OF SERVICE**

Attorney: MULLEN AND IANNARONE, 300 E MAIN STREET, 631-361-7050

Index No: CV 92-2156 HON. CAROL BAGLEY AMON

Court: UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK, COUNTY OF NEW YORK

Date Filed: _____

Plaintiff/Petitioner: **UNITED STATES OF AMERICA**Defendant/Respondent: **ROSA SANABRIA and NEW YORK PRESBYTERIAN HOSPITAL**

STATE OF NEW YORK COUNTY OF NEW YORK ss.:

**MARVIN COHEN**, being duly sworn deposes and says:

I am not a party to this action, I am over (18) eighteen years of age. I reside in New York State.

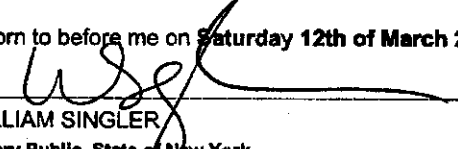
On Thursday March 10th 2005 at 02:30 PM, I served the within WRIT OF GARNISHMENT on **NEW YORK PRESBYTERIAN HOSPITAL** at 622 W. 168TH STREET, NEW YORK, NY, 10032 in the manner indicated below:[X] CORPORATE: By delivering a true copy of each to: **COLLEEN MASSIAH , CO-WORKER** . So served and authorized to accept service.

[X] MAIL COPY. Pursuant to CPLR-Section 3215(g)(3)(i), On Friday March 11th 2005 , deponent completed service by depositing a true copy of each document to the above address in a 1st Class postpaid properly addressed envelope not indicating that mailing was from an attorney or concerned legal action and marked "Personal and Confidential" in an official depository under the exclusive care and custody of the United States Post Office in the State of New York.

A description of the Defendant, or other person served on behalf of the Defendant is as follows:

Sex	Color of skin	Color of hair	Age	Height	Weight
Female	Black	Black	35 - 49 yrs	5'0" - 5'3"	130 - 159 lbs
Other features: glasses,					

Sworn to before me on Saturday 12th of March 2005

X 
 WILLIAM SINGLER
 Notary Public, State of New York
 No. 01SI6115080, Qualified in Nassau County
 Commission Expires August 30, 2008

X 
 MARVIN COHEN
 License No: 0867318
 Atty File#: C-29786

**108592 108592 108592 108592 108592 108592 108592**

AFFIDAVIT OF SERVICE

Attorney: MULLEN AND IANNARONE, 300 E MAIN STREET, 631-361-7050

Index No: CV 92-2156 HON. CAROL BAGLEY AMON

Court: UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK, COUNTY OF NEW YORK

Date Filed: _____

Plaintiff/Petitioner: UNITED STATES OF AMERICA
 Defendant/Respondent: ROSA SANABRIA and NEW YORK PRESBYTERIAN HOSPITAL

STATE OF NEW YORK COUNTY OF NEW YORK ss.:



GENE GAGLIARDI, being duly sworn deposes and says:

I am not a party to this action, I am over (18) eighteen years of age. I reside in New York State.

On March 9, 2005 at 9:09 AM PM, I served the within WRIT OF GARNISHMENT on ROSA SANABRIA at 2929 W. 31ST, #1014, BROOKLYN, NY, 11224 in the manner indicated below:☐ INDIVIDUAL. By delivering a true copy of each to said recipient personally; deponent knew the person to be the person described as said person therein.☐ SUITABLE AGE. By delivering a true copy of each to _____, a person of suitable age and discretion. Said premises is recipient's ☐ actual place of business ☒ dwelling house (usual place of abode) within the state.☒ AFFIXING TO DOOR. By affixing a true copy of each to the door of said premises, which is recipient's ☐ actual place of business ☒ dwelling house (place of abode within the state)

Deponent was unable, with due diligence to find recipient or a person of suitable age and discretion, having called thereat

March 7, 2005 at 6:31 AM PM March 8, 2005 at 7:59 AM PM
 _____ at _____ AM / PM _____ at _____ AM / PM

Address confirmed by a neighbor, _____

☒ MAIL COPY. On March 10, 2005, deponent completed service by depositing a true copy of each document to the above address in a 1st Class postpaid properly addressed envelope not indicating that mailing was from an attorney or concerned legal action and marked "Personal and Confidential" in an official depository under the exclusive care and custody of the United States Post Office in the State of New York.☐ A description of the Defendant, or other person served on behalf of the Defendant is as follows:

Sex	Skin	Hair	Age	Height	Weight	Other Features
<input type="checkbox"/> Male	<input type="checkbox"/> White	<input type="checkbox"/> Black	<input type="checkbox"/> 14 - 20 yrs	<input type="checkbox"/> Under 5'	<input type="checkbox"/> Under 100 lbs	<input type="checkbox"/> Mustache
	<input type="checkbox"/> Black	<input type="checkbox"/> Brown	<input type="checkbox"/> 21 - 35 yrs	<input type="checkbox"/> 5'0" - 5'3"	<input type="checkbox"/> 101 - 130 lbs	<input type="checkbox"/> Beard
	<input type="checkbox"/> Yellow	<input type="checkbox"/> Gray	<input type="checkbox"/> 36 - 50 yrs	<input type="checkbox"/> 5'4" - 5'8"	<input type="checkbox"/> 131 - 160 lbs	<input type="checkbox"/> Goatee
<input type="checkbox"/> Female	<input type="checkbox"/> Brown	<input type="checkbox"/> Blonde	<input type="checkbox"/> 51 - 65 yrs	<input type="checkbox"/> 5'9" - 6'0"	<input type="checkbox"/> 161 - 200 lbs	<input type="checkbox"/> Glasses
	<input type="checkbox"/> Red	<input type="checkbox"/> Red	<input type="checkbox"/> Over 65 yrs	<input type="checkbox"/> Over 6'	<input type="checkbox"/> Over 200 lbs	<input type="checkbox"/> Yamaca
		<input type="checkbox"/> Bald				

☒ MIL. SRVC. Your deponent asked the person spoken to whether defendant was in the active military service of the United States or N. Y. State; and received a negative reply. Upon information and belief I have; being based on the conversations & observations above narrated, defendant is not in the military service.☐ OTHER. Private house. No apartment number.Sworn to before me on March 11, 2005X William Singler
WILLIAM SINGLERNotary Public, State of New York
No. 01516115080, Qualified in Nassau County
Commission Expires August 30, 2008

X Gene Gagliardi
 GENE GAGLIARDI
 License No: 0872214
 Atty File#: C-29786



108591 108591 108591 108591 108591 108591 108591

On 07-28-, 2005, Garnishee was served with the Writ of Garnishment. For the pay period in effect on the date of service (shown above)

Yes No

☒ 1. Defendant was in my/our employ.

☐ 2. Pay period is ☒ weekly, ☐ bi-weekly
☐ semi-monthly, ☐ monthly.

Enter date present pay period began.

(Present means the pay period in which

this order and notice of garnishment were
served) 07-03-2005 to 07-16-2005

Enter date above pay period ends.

3. Enter amount of net wages. Calculate below:

(a) Gross Pay \$ 2791.31

(b) Federal income tax 196.77

(c) F.I.C.A. income tax 213.53

(d) State income tax + LOCAL TAX 214.57

Total of tax withholdings \$ 624.87

Net Wages \$ 2166.44

(a less total of b, c, d)

☐ 4. Have there been previous garnishments in effect. If
the answer is yes, describe below.

NONE.

4a. Please state defendant's current home address.

780 RIVERSIDE DRIVE, APT 2E, NEW YORK, NY 10032

5. The Garnishee has custody, control or possession of
the following property (non-earnings), in which the Debtor
maintains an interest, as described below:

	Description of Property	Approximate Value Interest's	Description of Debtor's in Property
1.	N/A		
2.			
3.			
4.			

Garnishee anticipates owing to the judgment-debtor in the
future, the following amounts:

	<u>Amount</u>	<u>Estimate date or Period Due</u>
1.	\$ <u>N/A.</u>	_____
2.	\$ _____	_____
3.	\$ _____	_____
4.	\$ _____	_____

(Check the applicable line below if you deny that you hold property subject to this order of garnishment.)

____ [The Garnishee makes the following claim of exemption on the part of Defendant:]

____ [Or has the following objections, defenses, or set-offs to Plaintiff's right to apply Garnishee's indebtedness to Defendant upon Plaintiff's claim:]

____ [The Garnishee was then in no manner and upon no account indebted or under liability to the Defendant, Rosa Sanabria and that the Garnishee did not have in his/her possession or control any property belonging to the Defendant, or in which the Garnishee has an interest; and is in no manner liable as Garnishee in this action.]

The Garnishee mailed a copy of this answer by first-class mail to (1) the Debtor at,

Rosa Sanabria

2929 W 31st #1014
Brooklyn, NY 11224

and (2) the Attorneys for the United States at,

Mullen & Iannarone, P.C.
300 East Main Street
Smithtown, NY 11787

Subscribed and sworn to before me this

29th day of July 2005.

Notary Public

My Commission expires: _____

Mohamed R. J. [Signature] Garnishee
BIBI S. KARIM
Notary Public, State of New York
No. 01KA6008641
Qualified in New York City
Expiration Date 06/15/2006

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

-against-

Rosa Sanabria
Defendant,

NEW York Presbyterian Hospital
Garnishee,

CV # CV 92-2156
HON. Carol Bagley Amon
Claim No. C-29786

MEMORANDUM OF LAW OF THE UNITED
STATES IN SUPPORT OF ITS MOTION
FOR A GARNISHEE ORDER

MULLEN & IANNARONE, P.C.
ATTORNEYS FOR THE PLAINTIFF
300 EAST MAIN STREET
SMITHTOWN, NY 11787

TEL. NO. 631-361-7050
FAX NO. 631-361-7354

LIBERATORE J. IANNARONE
ON THE BRIEF

PRELIMINARY STATEMENT AND STATEMENT OF CASE

That the defendant had previously obtained a student loan and defaulted in making the scheduled payments. The plaintiff brought an action to recover the balance due and the defendant failed to timely answer or move with respect to the complaint. The Clerk of the Court entered a default judgment against the defendant.

It has been ascertained that the defendant is now employed by the Garnishee. This Memorandum is being submitted to the Court in further support of plaintiff's application for an Order directing the Garnishee to make regular monthly deductions from defendant's earnings.

ARGUMENT
THE FEDERAL DEBT COLLECTION PROCEDURE ACT
GOVERNS THE AMOUNT TO BE GARNISHED

With an exception not applicable here, the Federal Debt Collection Procedure Act of 1990 ("FDCPA"), 28 U.S.C. §§3001-3308, "provides the exclusive civil procedures for the United States...to recover a judgment on a debt." 28 U.S.C. § 3001(a)(1). Among other post-judgment remedies, the FDCPA permits a court to issue-

a writ of garnishment against property (including nonexempt disposable earnings) in which the debtor has a substantial nonexempt interest and which is in the possession, custody, or control of a person other than the debtor, in order to satisfy the judgment against the debtor.

28 U.S.C. § 3205 (a).

The FDCPA defines "disposable earnings" as "that part of earnings remaining after all deductions required by law have been withheld(,)" 28 U.S.C. § 3002(5), and "nonexempt disposable earnings" as "25 percent of disposable earnings, subject to section 303 of the Consumer Credit Protection Act ("CCPA")." 28 U.S.C. § 3002(9). Sections 303 of the CCPA, 15 U.S.C. § 1673, provides that the maximum amount of weekly disposable earnings subject to garnishment may not exceed the lesser of 25% of weekly disposable earnings or the amount by which weekly disposable earnings exceed 30 times the minimum hourly wage found in 29 U.S.C. § 206(a) (1). The minimum wage is currently \$6.00, therefore 30 times minimum wage is \$180.00.

The FDCPA contains no other provision regarding the amount that a court may order garnished from a judgment debtor's wages. Thus, a court acting under the FDCPA is limited in ordering a wage garnishment to the lessor of 25% of weekly nonexempt disposable earnings or the difference between weekly disposable earnings and \$180.00.

Several of the Courts have mistakenly disregarded FDCPA and have deviated from the 25% weekly disposable earnings as provided in FDCPA, United States of America v. George 144 F. Supp.2d 161 (E.D.N.Y., 2001). United States of America v. Reid CV 96-2004 (E.D.N.Y., 2000).

CONCLUSION

The FDCPA, the statutory scheme which applies here, sets forth what a court may do in ordering garnishment of a judgment debtor's earnings. Under FDCPA, this court may order garnishment of weekly nonexempt disposable earnings, which the statute defines as 25% of disposable earnings, subject to the limitation imposed by 15 U.S.C. § 1673. For the reasons set forth above, the United States respectfully requests that this court issue a garnishment order in accordance with the provisions of the FDCPA.

Dated: August 2, 2005
Smithtown, New York

Respectfully submitted,
MULLEN & IANNARONE, P.C.,

By: _____
LIBERATORE J. IANNARONE
300 E. Main Street
Smithtown, New York 11787
Phone (631) 361-7050
Fax (631) 361-7354

LIBERATORE J. IANNARONE
On the Brief